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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Daryl Bailey
Montgomery County District Attorney
251 South Lawrence Street
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District Attorneys – Public Records –
Investigative Reports – Human Resources
Department – Complaints

Letters from the Alabama Department of Human Resources in the district attorney's investigative file, referring complaints about mistreatment of students in church preschools to the district attorney for investigation, are not subject to disclosure under the Open Records Law.

No portion of the letter is subject to disclosure.

Dear Mr. Bailey:

This opinion of the Attorney General is issued in response to your request.

QUESTION

(1) Are letters from the Alabama Department of Human Resources in the district attorney's investigative file precluded from disclosure in response to a public records request under section 12-21-3.1 of the Code of Alabama?

FACTS AND ANALYSIS

Your request states as follows:

My questions are in regard to letters sent by the Alabama Department of Human Resources (“DHR”) to district attorneys pursuant to section 38-7-3 of the Code of Alabama and whether those letters, in whole or in part, are subject to the requirements of the Open Records Law found in section 36-12-40 of the Code of Alabama. ALA. CODE § 36-12-40 (2013).

Section 38-7-3 exempts church preschools from licensing by DHR if certain conditions are met. ALA. CODE § 38-7-3 (2012). If complaints are made against a church preschool, the statute requires that “[t]he district attorney of the county in which the preschool program is located shall, upon proper presentment of charges, investigate at his discretion any allegations against any such church under the laws of the State of Alabama.” *Id.*

This proper presentment of charges is in the form of a letter from DHR, addressed to the appropriate district attorney, setting out the names of those involved, the allegations made, and the church preschool with the physical address. Recently, I received an open records request from AL.com asking for copies of DHR letters.

You further state that these letters allege mistreatment of juveniles. This Office understands that the district attorney, on receiving the letters, places them in an investigative file and treats them like any other criminal investigation.

DHR licenses daycare centers and other child care facilities such as day care homes, group homes, and foster family homes. *See* ALA. CODE § 38-7-2 (2012); ALA. CODE § 38-7-4 (2012). Preschool programs that are an integral part of a local church ministry or a religious nonprofit elementary school are specifically exempted from DHR licensure procedures. ALA. CODE § 38-7-3 (2012).

You correctly point out that DHR jurisdiction is limited to investigating whether the preschools are in compliance with the statutory requirements for the

exemption. Opinion to Honorable Bill Fuller, Commissioner, Alabama Department of Human Resources, dated April 24, 2001, A.G. No. 2001-160. Jurisdiction over the mistreatment of students lies with the district attorney. ALA. CODE § 38-7-3 (2012).

The Open Records Law provides that “[e]very citizen has a right to inspect and take a copy of any public writing of this State, except as otherwise expressly provided by statute.” ALA. CODE § 36-12-40 (2013). Subsection (b) of section 12-21-3.1 of the Code of Alabama, however, provides a specific exemption for law enforcement investigative material. It states as follows: **“Law enforcement investigative reports and related investigative material are not public records.** Law enforcement investigative reports, records, field notes, witness statements, and other investigative writings or recordings are privileged communications protected from disclosure.” ALA. CODE § 12-21-3.1(b) (2012) (emphasis added).

The Alabama Supreme Court has addressed this exemption in the context of incident reports generated by the Alabama Department of Corrections. *Allen v. Barksdale*, 32 So. 3d 1264 (Ala. 2009). The Court distinguished reports prepared by regular correctional officers from those prepared by the intelligence and investigations division. In concluding that the latter are covered by the exemption, while the former are not, the Court reasoned that “[a]n incident report documents any incident—from the mundane to the serious—whereas an investigative report by the I & I division reflects a close examination of an incident and a systematic inquiry and may lead to criminal prosecution.” *Id.* at 1271. Similar to the I & I reports discussed in *Allen*, DHR referrals to the district attorney of church preschool student mistreatment complaints form the basis of a traditional criminal investigation by the district attorney’s office.

Accordingly, it is the opinion of this Office that these complaints are investigative material that may be withheld from public inspection. It is noted that they remain confidential even after the case is closed. *See* opinion to Honorable Cleophus Thomas, Jr., Attorney, City of Anniston, dated October 28, 2011, A.G. No. 2012-009 (Alabama Uniform Incident/Offense Report).

CONCLUSION

DHR letters in the district attorney’s investigative file, referring complaints about mistreatment of students in church preschools to the district attorney for investigation, are not subject to disclosure under the Open Records Law.

QUESTION

(2) If the letters are covered by section 12-21-3.1, are they exempted from the public record requirements in whole or in part?

FACTS AND ANALYSIS

Under the well-established rules of statutory construction, words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). The exemption for law enforcement investigative reports and related material found in section 12-21-3.1 is not qualified. Therefore, the statute provides for a blanket exemption covering the entirety of such materials.

CONCLUSION

No portion of a DHR letter referring a complaint about a church preschool to the district attorney is subject to disclosure.

QUESTIONS

(3) If it is determined that the letters do not fall under section 12-21-3.1, do they fall under any DHR exception such as section 26-14-8 of the Code of Alabama or any other exception related to juveniles aside from redacting the juvenile's name?

(4) Is there any other exception under which the letters fall?

FACTS, ANALYSIS, AND CONCLUSION

Based on the response given to Question 1, Questions 3 and 4 are moot.

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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in cursive script, appearing to read "G. Ward Beeson, III".

G. WARD BEESON, III
Deputy Chief, Opinions Section

LS/GWB

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